IN THE

SUPREME COURT of the UNITED STATES

October Term, 1975

No. 75-1699

Mark H. Horodner,

Appellant,

vs.

Arnold R. Fisher as Commissioner of the New York State Department of Motor Vehicles

Louis J. Lefkowitz as Attorney General of the State of New York

Hon. Henry G. Wenzel III as District Attorney of the County of Suffolk,

Appellees.

On Appeal From the Court of Appeals

Of the State of New York

Motion to Dismiss and Brief in Support of Motion to Dismiss

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Motion to Dismiss

Appellee, the District Attorney of Suffolk County, pursuant to Rule 16 of the Revised Rules

of the Supreme Court of the United States, moves for an Order of this Court dismissing the above-entitled appeal for the reason that it does not present a substantial federal question.

OPINIONS BELOW

The opinion of the Supreme Court of the State of New York, Suffolk County, upholding the constitutional validity of Section 510 of New York's Vehicle and Traffic Law is not officially reported, but same is reprinted in Appendix C of Appellant's Brief.

The Order of the Supreme Court of the State of New York, Appellate Division, Second Department, unanimously affirming the determination of the lower court, without opinion, is officially reported at 46 A.D.2d 845 (1974).

The opinion of the Court of Appeals of the State of New York, unanimously affirming the Order of the intermediate appellate court is officially reported at 38 N.Y.2d 680 (1976).

JURISDICTION

The jurisdiction of this Court is invoked under

28 U. S. C., section 1257, subdivision 2. Appellant claims he has been deprived of due process under the Fourteenth Amendment of the United States Constitution.

QUESTION PRESENTED

Does Section 510 of the New York Vehicle and Traffic Law violate the due process clause of the Fourteenth Amendment of the United States Constitution?

STATUTES INVOLVED

New York Vehicle and Traffic Law, Section 510, subdivision 2(a)(iv) provides:

> "Mandatory revocations and suspensions. a. Mandatory revocations. Such licenses shall be revoked and such certificates of registration may also be revoked where the holder is convicted....:
>
> of a third or subsequent violation, commited within a period of eighteen months, any provision of section eleven hundred eighty of this chapter, any ordinance or regulation limiting the speed of motor vehicles and motorcycles or any provision constituted a misdemeanor

by this chapter, not included in subparagraphs (i) or (iii) of this paragraph, except violations of subdivision one of section three hundred seventy-five of this chapter or of subdivision one of section four hundred one of this chapter and similar violations under any local law, ordinance or regulation committed by an employed driver if the offense occurred while operating, in the course of his employment, a vehicle not owned by said driver, whether such three or more violations were repetitions of the same offense or were different offenses...."

New York Vehicle and Traffic Law, Section 510, subdivision 7 provides, in pertinent part, as follows:

"....Revocation or suspension hereunder shall be deemed an administrative act reviewable by the supreme court as such. Notice of revocation or suspension, as well as any required notice of hearing, where the holder is not present, may be given by mailing the same in writing to him at the address contained in his license or certificate of registration, as the case may be. Attendance of witnesses may be compelled by subpeona...."

New York Vehicle and Traffic Law, Section 1807, subdivision 1 provides as follows:

"The local criminal court, upon the arraignment in this state of a resident of this state charged with a violation of the vehicle and traffic law,

or other law or ordinance relating to the operation of motor vehicles or motorcycles, and before accepting a plea,or in the case of such a defendant who has previously pleaded not guilty, as provided in section eighteen hundred six of this chapter, and who wishes to change or withdraw such plea, must inform the defendant at the time of his arraignment or appearance for trial in substance as follows:

A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motorcycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law.

The giving of the foregoing instructions by means of a statement printed in bold red type in a size equal to at least twelve point type, upon a summons or ticket issued to a person charged with any such offense shall constitute compliance with the requirements of this section...."

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States
Amendment XIV

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

On September 28, 1972, Appellant's license to operate a motor vehicle was revoked without a hearing by the Commissioner of Motor Vehicles because of three speeding convictions within an eighteen month period [Vehicle and Traffic Law, Section 510, subdivision 2(a)(iv)].

Thereafter, on January 2, 1973, he was charged in the District Court of Suffolk County (New York) with operating a motor vehicle while his license was revoked (Vehicle and Traffic Law, Section 511). Appellant pleaded guilty to this charge on September 19, 1973 and sentencing was adjourned to a subsequent date.[1]

Meanwhile, on October 9, 1973, Appellant moved by way of Order to Show Cause in the Supreme Court of Suffolk County for a judgment, pursuant to CPLR Article 78, setting aside the revocation of his license on the ground that the Commisioner of Motor Vehicles did not

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1. Appellant was sentenced on January 11, 1974 to fifteen days in jail. He, thereafter, appealed his conviction to the Appellate Term of the Supreme Court, Second Department. However, on June 5, 1974, the Appellate Term dismissed the appeal for lack of prosecution. No application was ever made by Appellant to have the appeal restored to the calendar.

afford him a pre-revocation hearing. He argued that the summary revocation of his license denied him due process of law, and, therefore, his conviction for operating a motor vehicle while license revoked was tainted.[2]

On December 3, 1973, the Supreme Court of Suffolk County determined that Vehicle and Traffic Law, Section 510, subdivision 2(a)(iv) represented a reasonable and necessary exercise by the State of its police powers and that it contained all the requisite elements of constitutional due process.

On November 29, 1974, the Supreme Court of the State of New York, Appellate Division, Second Department, unanimously affirmed the determination of the lower court, without opinion.

On February 26, 1976, the Court of Appeals of the State of New York unanimously affirmed the order of the intermediate appellate court in an opinion by Honorable Lawrence H. Cooke.

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2. There was never any suggestion by Appellant in the Courts below that he was innocent of the three underlying speeding convictions.

POINT ONE

VEHICLE AND TRAFFIC LAW, SECTION 510, SUBDIVISION 2(a)(iv) FULLY COMPORTS WITH THE REQUIREMENTS OF DUE PROCESS.

In Bell v. Burson, 402 U. S. 535 (1971), the Court ruled that drivers' licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. The required due process, the Court held, consisted of affording the motorist notice and opportunity for a hearing. Most significantly, this notice and hearing must be afforded before the termination or revocation becomes effective.

In the case at bar, Appellant was thrice convicted of speeding within an eighteen month period. Prior to the entry of each judgment of conviction, he was given notice of the charges and an opportunity to be heard thereon. Notably, Appellant makes no claim here that he was deprived of due process in the judicial tribunals which convicted him of the three underlying speeding charges.

In addition, Vehicle and Traffic Law, Section 510, subdivision 7 provides that a license revocation is not to be effected if the revoking official is

satisfied that the judge who pronounced the judgment of conviction failed to comply with the requirements of Vehicle and Traffic Law, Section 1807, subdivision 1. Said latter section mandates that a warning be given to a motorist as to the effect of a conviction on the revocation or suspension of his driver's license.

Moreover, upon receiving a notice of revocation, a motorist may seek a stay thereof and, by way of an Article 78 proceeding (CPLR 7803, subdivision 3), challenge the action taken. Vehicle and Traffic Law, Section 510, subdivision 7 provides that such act of revocation shall be deemed administrative for the purpose of judicial review. On review, a motorist may challenge the action on grounds such as: (1) misidentification of the person subject to one or more of the convictions; (2) reversal or dismissal on appeal of one or more of the convictions; and (3) miscalculation of the time within which the convictions occurred.

At no time in the Courts below did Appellant challenge the revocation of his license on any of the above enumerated grounds. Nor did he ever claim that

the action of the revoking official was arbitray or capricious.

Based upon the foregoing, it is clear that Vehicle and Traffic Law, Section 510, subdivision 2(a)(iv) fully comports with the requirements of constitutional due process [Stauffer v. Weedlun, 188 Neb. 105 (1972), app. dsmd. 409 U. S. 972 (1972); Horodner v. Fisher, 38 N.Y.2d 680, 684-685 (1976)].

Furthermore, no useful purpose would be served by requiring a separate, pre-revocation hearing before the Commissioner of Motor Vehicles. Under the statute, the Commissioner's function in these point-revocation proceedings is purely ministerial [Vehicle and Traffic Law, Section 510, subdivision 2(a)(iv)]. Moreover, Appellant has already been afforded a full evidentiary hearing in the Tribunal of conviction.

Perhaps no clearer exposition of the law can be found than that which exists in Stauffer v. Weedlun, supra., wherein the Supreme Court of Nebraska said:

> "We think that in a very real sense the essential facts have been determined in the judicial proceedings in connection with each conviction. In a very real sense the Director (of Motor Vehicles) acts only ministerially. The result--the revocation--flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. Of these the

> motorist already has knowledge. Of their effect point-wise he is charged by law with knowledge just as with any other case of knowledge of the law. These circumstances do, in our opinion, make the procedures applicable to revocation of a driver's license for an accumulation of points for traffic offense conviction clearly distinguishable from revocation under the financial responsibility law as in Bell v. Burson, supra. The financial responsibility statutes in effect create without any hearing a presumption of fault. This, if we understand the footing of Bell v. Burson, supra, is their constitutional deficiency. Such a situation does not exist in the case here involved. We hold that under the statutory scheme of Nebraska no notice and hearing were required before the issuance of the order of revocation...
>
> ....The compelling public interest in removing from the highways those drivers whose records demonstrate unsafe driving habits outweighs the need for notice and hearing prior to the order to protect the individual against mistake. In this connection the matter must be viewed not as an isolated case but in the collective aspect, that is, the removal of many such drivers from the highways."(188 Neb. 105, 112, 114)

Significantly, the appeal in Stauffer was dismissed by this Court "for want of (a) substantial federal question." This summary disposition was, of course, binding on the New York Court of Appeals. See Hicks v. Miranda, ____U. S.____,45 L. Ed. 2d 223, 236 (1975).

CONCLUSION

NO SUBSTANTIAL FEDERAL QUESTION HAS BEEN PRESENTED BY THIS APPEAL. ACCORDINGLY, THE DISTRICT ATTORNEY'S MOTION TO DISMISS SHOULD BE GRANTED.

DATED: Riverhead, New York
June 25, 1976

Respectfully submitted,

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